SB CIVIL MISC. APPEAL NO. 64/1993
(HATTI RAM v TULSI RAM & ORS.)

HON'BLE MR. JUSTICE R.S. CHAUHAN

DATE OF ORDER:

Mr. S.S. Hasan for the appellant.
Mr. H.M. Bhargava for the respondents.

The appellant claimant having lost his brother in a fatal accident, having been awarded a compensation of only Rs. 42,000/- for the death of his brother, has challenged the award dated 21.10.92 passed by the Motor Accident Claims Tribunal, Deeg (Bharatpur) for enhancement.

The brief facts of the case are that on 15.7.86 around 5.00 O' clock in the evening when Prabhati, the appellant's brother, was walking on the road and was carrying trash with him to be thrown, a tractor bearing registration No. RSD 7116 driven by respondent No.1, in a rash and negligent manner, hit Prabhati and ran over him. Consequently, Prabhati expired on the spot. The appellant filed a claim petition for Rs. 1,50,000/-. The Insurance Company filed the written statement and claimed that the tractor driver did not have a valid licence and the tractor was not being used for agricultural purpose. Therefore, for these two reasons the

Insurance Company is not liable for the payment of the compensation amount. In order to prove his case the appellant examined three witnesses and submitted number of documents. The Insurance Company on their behalf examined only a single witness. After considering both oral and documentary evidence, the learned Tribunal absolved the Insurance Company of its liability and fastened the liability for the payment of the compensation on the tractor owner and the tractor driver. It granted compensation of Rs. 42,000/- to the appellant. Since the appellant is aggrieved by the meagre compensation amount, he has filed this appeal before this Court.

Mr. S.S. Hasan, the learned counsel for the appellant, has vehemently argued that there is not an iota of evidence produced by the Insurance Company to prove the fact that the driver of the tractor did not have a valid licence. Mr. Ashok Kumar Gupta, NAW-1, the witness on behalf of the Insurance Company, has not uttered a word about the driver not having the valid licence with him. Moreover, the Tribunal has not given any reason for concluding that the driver did not possess a valid licence. Therefore, the learned Tribunal has wrongly absolved the Insurance Company of its liability. He has further argued that the income of the deceased has been wrongly

assessed. Moreover, the amount to be deducted from the salary, as the amount that that deceased would have spent on him, is one-third and not one half. Yet, the learned Tribunal has deducted one half of the salary that the deceased would have spent on him. Lastly, according to him a multiplier of 20 has been applied by the learned Tribunal whereas a multiplier of 25 should have been applied. For, at the time of the accident the deceased was aged 40 years and in case the said age is subtracted from the average age, taken to be 65 years, a multiplier of 25 should have been applied by the Tribunal.

On the other hand, Mr. R.S. Bhati, learned counsel for the respondents, has supported the impugned award.

We have heard both the learned counsels and have perused the impugned award.

NAW-1, Ashok Kumar Gupta, neither in his examination-in-chief, nor in his cross-examination states anything about the fact that the driver of the tractor did not have a valid licence. Therefore, the Insurance Company has failed to prove that the tractor driver did not possess a valid licence. In the absence of such an evidence, it is surprising that the learned Tribunal has concluded that the driver of

the tractor did not possess a valid licence. Hence, the learned Tribunal is not justified in absolving the Insurance Company of its liability. Moreover, according to the Post-Mortem Report, the age of the deceased was 40 years. This case is covered by the Motor Vehicle Act, 1939. According to the practice prevalent at the time, the multiplier had to be calculated by subtracting the age of the deceased from the average life expectancy of an Indian which was taken to be 65 years. Considering the fact that deceased was 40 years old, a multiplier of 25 should have been applied by the learned Tribunal. But, the learned Tribunal has applied multiplier of only 20. For the application of multiplier of 20, the learned Tribunal has not given any reasons. Therefore, the learned Tribunal is not justified in applying a multiplier of 20.

The learned Tribunal has taken the income of the deceased to be Rs. 300/- per month and has calculated the loss of income to be Rs. 150/- per month. In fact only one third of Rs. 300 should be taken as the amount that the deceased would have spent on him. Therefore, the loss of income should be assessed as 200x12x25 = 60,000/-. Hence, we are inclined to increase the compensation from Rs. 42,000/- to Rs. 60,000/- alongwith an interest

@ 9%. The Insurance Company is directed to deposit the amount with the Tribunal within a period of one month from the date of receipt of the certified copy of this order. The Tribunal is directed to send a notice to the claimant and to disburse the said amount within a period of one month thereafter. With these observations this appeal is allowed.

(R.S. CHAUHAN)J.

MRG.